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No. 151

In the

# Supreme Court of the United States

October Term 1958

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CATHERINE A. LIETZ,

Petitioner.

vs.

ARTHUR S. FLEMING, Secretary of Health, Education and Welfare, Social Security Administration of the United States,

Respondent.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Catherine A. Lietz, prays that a Writ of Certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered April 9, 1959 after application for rehearing was refused.

## OPINIONS BELOW

The opinion of the court below was dated March 3, 1959, was filed March 3, 1959, and is reported in 264 F

2d 311. The opinion on rehearing was filed April 9, 1959, has not yet been reported and for convenience is printed in an appendix filed with this petition, and there is also printed in said appendix a copy of the opinion of the administrative agency involved.

## BASIS OF JURISDICTION

Jurisdiction is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938.

## QUESTION PRESENTED

The question presented in this petition is whether Section 202 (e). (1) of the Social Security Act, 42 U S C 402, which grants survivors insurance benefits to widows of "fully insured individuals" who died after 1939, prevents the payment of survivor's insurance benefits under 42 U S C 415 (note), 68 Stat. 1084, 83rd Congress, 2d Session, 1954 to petitioner whose husband died May 17, 1938, and who at time of death was not fully insured but who had six quarters of coverage.

## STATUTES INVOLVED

Three federal statutes set forth in (1), (2) and (3) below are involved:

(1) 42 USC 402, which defines a widow, for purposes of widows Insurance benefits under the Social Security Law, as

> "The widow of an individual who died a fully insured individual after 1939 * * *"

(2) 42 USC 415 (note) (Supp II) (App 5a-6a), the 1954 amendment, which provides in pertinent part in sub-section

(a) for "benefits in certain cases of death before September 1950 as follows:

> "In the case of any individual who died prior to September 1, 1950, and was not a fully insured individual * * * when he died, and who had not less than six quarters of coverage * * * such individual shall * * * be deemed to have died a fully insured individual."

In sub-section (b) of the same statute it is provided that:

> "The provisions of subsection (a) shall be applicable only in the case of monthly benefits under Sec. 202 of the Social Security Act for months after August 1954, on the basis of applications filed after such month."

(3) 42 USC 415, in pertinent part as it read prior to the 1954 amendment referred to in (2) above, provided that:

> "In the case of any individual who died prior to September 1, 1950, the term "fully insured individual" means any individual who had not less than one quarter of coverage (whenever acquired) for each two of the quarters elapsing after 1936, or after the quarter in which he attained the age of twenty-one, whichever is later, and up to but *excluding* the *quarter in which he* attained retirement age, or *died*, whichever first occurred, except that in no case shall an individual be a fully insured individual unless he has at least six quarters of coverage." (Italics ours)

## STATEMENT OF MATERIAL FACTS

Petitioner is the widow of her decedent husband, who died May 17, 1938. Petitioner's decedent had six quarters of coverage, namely four quarters in 1937 and two quarters in 1938.